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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,995	02/20/2007	Daniel Grant	008409-000002	4610

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WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP  
111 MONUMENT CIRCLE, SUITE 3700  
INDIANAPOLIS, IN 46204-5137

EXAMINER
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DEUBLE, MARK A

ART UNIT	PAPER NUMBER
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3651

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,995	<b>Applicant(s)</b> GRANT ET AL.	
	<b>Examiner</b> MARK A. DEUBLE	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8 and 10-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the slat with a transparent surface portion that is pivotable and inclined with respect to the load supporting body of claims 15-16, 19-20 and 22 and the endless conveyor of claim 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. Claims 15-16, 19-20, and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the drawings fail to show any transparent surface portion inclined with respect to the load supporting body and the brief statement in the specification that “The main body 10 and supporting body 30 may be pivotally attached allowing easier access to and insertion of the cartridge 24. The main body 10 may be inclined relative to the supporting body 30.” fails to enable a transparent surface portion that is inclined with respect to the load supporting body *such that when the slat is installed in the conveyor, the load will tend to be supported by the load supporting body and not obscure the transparent surface portion.* This is because merely inclining the transparent surface portion does not necessarily achieve the intended result in italics above. The surface must be inclined downwardly toward the load supporting body and not just in any direction as suggested by the language of the specification to achieve the intended result and therefore the claim is not enabled.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-2, 4-8, 10-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3651

Claim 1 states that a load supporting body is associated with the cartridge receiving body "so that the slat can be installed in an endless conveyor such that loads transported by the endless conveyor will be transported on the load supporting body and the cartridge will not usually be covered by said loads." Claim 18 states that the cartridge receiving body is "disposed by said first side of said load supporting body such that when installed in said conveyor, said load supporting body is generally supported by said load supporting body and not by said transparent surface portion." These limitations render the scope of the claim impossible to ascertain because whether or not the cartridge will usually be covered depends on the size and type of loads placed on the conveyor as well as how many loads are placed on the conveyor and how densely they are spaced from each other rather than on the structure of the conveyor itself. For example, if loads placed on the conveyor were longer than the conveyor slat, or if loads were placed on the conveyor in end to end relationship, the cartridge would usually be covered. Therefore the claims are indefinite because a person operating a similar conveyor apparatus could be guilty of infringing such an apparatus claim depending on a method of using apparatus rather than on the structure of the apparatus as is usually required for infringement of an apparatus claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 4-6, 10-14, 17-18 and 21 rejected under 35 U.S.C. 102(b) as being anticipated by Hine (US 6,044,961) (note changes in bold).

Art Unit: 3651

Hine shows an endless conveyor 10 formed by a plurality of slats 12. Each slat has a **cartridge receiving body 44** with a load supporting upper surface 78 that is transparent **and load supporting bodies 38/40 or 60/62/64 (shown in Figs. 3 and 5) associated with the cartridge receiving body such that narrow placed on the edges of the conveyor would be transported by the endless conveyor without usually conveying the cartridge receiving bodies. The load supporting bodies have first and second sides and respective ends when installed in a conveyor that are disposed in end to end relationship with adjacent slats of the conveyor.** An open ended cavity 42 is positioned between the upper surface of the **cartridge receiving** body and below the transparent surface for retaining a removable multimedia cartridge that may be in the form of a thin television screen or a computerized LCD panel (col. 4, ln. 67 and col. 6, ln. 1-7). **The cavity may be open at only one end (Fig. 5) to facilitate insertion and removal of the cartridge. When the cavity is open only at one end, the cartridge receiving body is attached to a front side of the load supporting body.** The cartridge is securely retained in the cavity by friction fit with the upper surface 78 so that the upper surface protects the cartridge. The exposed surface of the cartridge shows a decorative pattern and/or indicia in the form of advertising data. While not shown, the conveyor would inherently include electronic means to communicate data to the cartridge thereby to remotely control and change the data displayed thereon at any given point in time because some means of providing images to the television screen or LCD panel is necessary for them to display information. Furthermore, because the cartridge is attached to the underside of the load supporting surface, at least part of the electronic means for communicating data to the cartridge

Art Unit: 3651

would be attached to the underside of the load supporting surface as well. Thus, Hine shows all the structure required by claims 1-6, 9-14, 17-18 and 21.

**In regard to applicant's assertion that the cartridge receiving body of the conveyor of Hine would usually be covered by a load conveyed by the conveyor, the Examiner respectfully disagrees. While some of the cartridge receiving bodies of the conveyor would be covered by loads conveyed by the conveyor when it is used for its intended baggage handling purpose, most would not be covered as bags are often supplied to such a conveyor with significant spacing between bags (See for example the spacing of bags in Fig. 1 of Conklin Jr. US 5,165,526 previously cited).**

**Finally, in regard to applicant's assertion that Hine does not inherently include the electronic means to communicate data to the cartridge because it is at least as likely that the screen of Hine would be fed with images from a memory device, it should be noted that such a memory device would itself provide the electronic means for communicating data required by the claim.**

7. Claims 1-2, 4-6, 8, and 14-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Conklin, Jr. (US 6,186,314) (note changes in bold).

Conklin shows an endless conveyor 10 formed by a plurality of slats 30. Each slat has a **cartridge receiving body 32** with a load supporting upper surface 42 that is transparent **and load supporting bodies 33/34/35** associated with the cartridge receiving body such that narrow placed on the edges of the conveyor would be transported by the endless conveyor without usually conveying the cartridge receiving bodies. The load supporting bodies have first and second sides and respective ends when installed in a conveyor that are disposed in

Art Unit: 3651

**end to end relationship with adjacent slats of the conveyor.** An open ended cavity **38** is positioned between the upper surface of the **cartridge receiving** body and below the transparent surface for retaining a removable multi-media cartridge that may be in the form of a thin television screen or a computerized LCD panel (col. 4, ln. 67 and col. 6, ln. 1-7). **The cavity is open at only one end and the upper surface of the cartridge receiving body is pivotally connected to the load supporting body so that it is inclined relative to the load supporting body 33 during insertion and removal of the cartridge.** The exposed surface of the cartridge shows a decorative pattern and/or indicia in the form of advertising data. Thus Conklin shows all the structure required by claims 1-6, 8-9, 14-21.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7-8 and **12-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hine in view of the patents to Findlay (US 5,176,239; US 5,411,127, and US 5,439,090) (note changes in bold).

Hine shows generally all the structure required by the claims except for the tempered glass and scratch resistant surface of claims 7-8. However, all of the Findlay references teach that tempered glass is an art recognized equivalent with transparent plastics such as polycarbonate for covering advertising on an endless conveyor. Therefore the use of tempered



Art Unit: 3651

glass is deemed to have been an obvious design choice absent some disclosure in the applicant's specification of some unusual advantage or result. *In re Kuhle*, 188 USPQ 7 (CCPA 1975).

In regard to claim 13, it should be noted that while it is unclear where the electronic means is attached in the apparatus of Hine, the attachment of the means to the underside of the load supporting surface is deemed to have been an obvious rearrangement of parts. . In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.); In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice).

**Furthermore, assuming for the sake of argument that the inherent means of communicating data to the cartridge of Hine does not meet all the limitations of claim 12, it should be noted that the use of such means would have been well known by one of ordinary skill in the art as is evidenced by applicants remarks with regard to enablement under 35 U.S.C. 112 1<sup>st</sup>. Therefore, in the absence of any unusual or unexpected result, the use of such structure would have been obvious.**

10. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin in view of the patents to Findlay (US 5,176,239; US 5,411,127, and US 5,439,090).

Conklin shows generally all the structure required by the claims except for the tempered glass and scratch resistant surface of claims 7-8. However, all of the Findlay references teach that tempered glass is an art recognized equivalent with transparent plastics such as

Art Unit: 3651

polycarbonate for covering advertising on an endless conveyor. Therefore the use of tempered glass is deemed to have been an obvious design choice absent some disclosure in the applicant's specification of some unusual advantage or result. *In re Kuhle*, 188 USPQ 7 (CCPA 1975).

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. In regard to the objection to the drawings and the rejection under 35 U.S.C. 112 1<sup>st</sup> paragraph, it should be noted that, in view of the examiner, these deficiencies in the application can not be overcome without adding new matter. However, it is also believed that the subject matter of claim 22 may be allowable if it were properly enabled by better drawings, including perspective views showing the slat within a conveyor assembly. It is therefore recommended that a continuation in part application be filed with the more detailed drawings of the present invention.

Art Unit: 3651

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK A. DEUBLE whose telephone number is (571)272-6912. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark A. Deuble/  
Primary Examiner  
Art Unit 3651

md